

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**HANSON AND MORGAN LIVESTOCK, INC.,  
a West Virginia corporation, d/b/a GREENBRIER  
VALLEY LIVESTOCK MARKET,**

**Plaintiff,**

**v.**

**Civil Action No. 5:07-0330**

**B4 CATTLE COMPANY, INC., a  
Commonwealth of Virginia corporation,  
and BERT SMITH, IV, individually,**

**Defendants.**

**AGREED SETTLEMENT AND JUDGMENT ORDER**

On Friday, January 16, 2009, at 4:50 p.m., the Court held a telephonic status conference during which the parties by their respective Counsel, Christopher S. Smith of Hoyer, Hoyer & Smith, PLLC for the Plaintiff, and Steven R. Minor of Elliott Lawson & Minor for the Defendants, announced and described the terms of a settlement and the resolution of their disputes in this Civil Action, and the terms of the parties' settlement agreement are as follows:

1. That a Judgment Order upon Count III of the Plaintiff's Complaint shall be entered finding that the Defendants are jointly and severally liable to the Plaintiff in the amount of \$300,000.00, plus statutory interest from January 16, 2009, and statutory costs, for a debt for cattle purchased and obtained from the Plaintiff by the Defendants by false pretenses, false representations, and actual fraud, other than a statement respecting the Defendants' financial condition.

2. That except as provided in Paragraph 3, below, the Plaintiff agrees not to execute upon or otherwise enforce the \$300,000.00 Judgment for so long as the Defendants pay to the Plaintiff the sum of \$200,000.00, without interest, by thirteen (13) installment payments of \$15,000.00 and a fourteenth (14th) and last installment payment of \$5,000.00, with the first installment of \$15,000.00 to be paid by the Defendants to the Plaintiff on or before April 16, 2009, and thereafter, the installments shall be made on the sixteenth (16th) day of every third month (July, October, January and April).

3. The Defendants herein are Counterclaiming Defendants in that certain Civil Action pending in the District Court of Cuming County, Nebraska, and styled "Max Christen Kant, Plaintiff, v. Bert Smith, IV and B4 Cattle Company, Inc., Case No. CI07-73", and the Defendants herein, B4 Cattle Company, Inc. and Bert Smith, IV, shall assign to the Plaintiff herein, Hanson and Morgan Livestock, Inc., d/b/a Greenbrier Valley Livestock Market, the first \$275,000.00 in cash of any cash recovery received by the Defendants, B4 Cattle Company, Inc. and/or Bert Smith, IV, upon their Counterclaim in said Case No. CI07-73, by way of judgment, settlement or otherwise, as reduced by any of the installment payments received by the Plaintiff herein as provided in the previous Paragraph 2 of this Agreed Settlement and Judgment Order, and the Defendants herein shall within ten (10) days after entry of this Agreed Settlement and Judgment Order, give written notification to the Plaintiff in the aforesaid Case No. CI07-73 in a form acceptable to the Plaintiff herein, of the assignment to the Plaintiff herein, so that the Plaintiff in the aforesaid Case No. CI07-73 shall make payment to the Plaintiff herein, of any cash recovery received by B4 Cattle Company, Inc. and/or Bert Smith, IV, upon their

Counterclaim of up to \$275,000.00 in cash, reduced by any payments received by the Plaintiff as provided in Paragraph 2, above, and the Defendants herein shall take such other action as may be reasonably necessary to assist the Plaintiff herein in the enforcement of this Agreed Settlement and Judgment Order by execution, suggestion, garnishment or otherwise, as may be allowed by applicable law to perfect the assignment and to insure that any payments due to B4 Cattle Company, Inc. and/or Bert Smith, IV, upon their Counterclaim in Case No. CI07-73 are made directly to the Plaintiff herein by the Plaintiff in the aforesaid Case No. CI07-73. In the event that the sum of (i) the amounts recovered and paid to the Plaintiff herein upon the Defendants' Counterclaim in Case No. CI07-73 and (ii) the amounts paid to the Plaintiff herein in installments as provided above, is less than \$200,000.00, then the Defendants shall continue to make the installment payments as provided above until the Plaintiff is paid \$200,000.00.

**THEREFORE**, based upon the foregoing, it is

**ORDERED** that a Judgment upon Count III of the Plaintiff's Complaint shall be and is hereby entered in favor of the Plaintiff, Hanson and Morgan Livestock, Inc., d/b/a Greenbrier Valley Livestock Market, and against the Defendants, B4 Cattle Company, Inc. and Bert Smith, IV, jointly and severally, in the amount of \$300,000.00, plus statutory interest from January 16, 2009, and statutory costs, upon this Court's finding that the Defendants are liable to the Plaintiff in the sum of \$300,000.00 for a debt for cattle purchased and obtained from the Plaintiff by the Defendants by false pretenses, false representations, and actual fraud, other than a statement respecting the Defendants' financial condition; and it is further

**ORDERED** that the Plaintiff shall not execute upon or otherwise enforce the \$300,000.00 Judgment for so long as the Defendants pay to the Plaintiff \$200,000.00, without interest, by thirteen (13) installment payments of \$15,000.00 and a fourteenth (14th) and last installment payment of \$5,000.00, with the first installment of \$15,000.00 to be paid by the Defendants to the Plaintiff on or April 16, 2009, and thereafter, the installments shall be made on the sixteenth (16th) day of every third month (July, October, January and April); and it is further

**ORDERED** that the Defendants shall assign to the Plaintiff the first \$275,000.00 in cash of any cash recovery received by them by judgment, settlement or otherwise, upon their Counterclaim in the aforesaid Case No. CI07-73 as reduced by any of the installment payments received by the Plaintiff as provided in Paragraph 2 of this Agreed Settlement and Judgment Order, and the Defendants herein shall within ten (10) days after entry of this Agreed Settlement and Judgment Order, give written notification to the Plaintiff in the aforesaid Case No. CI07-73 in a form acceptable to the Plaintiff herein of the assignment to the Plaintiff herein so that the Plaintiff in the aforesaid Case No. CI07-73 shall make payment to the Plaintiff herein of any cash recovery in favor of B4 Cattle Company, Inc. and/or Bert Smith, IV upon their Counterclaim of up to \$275,000.00 in cash, reduced by any payments received by the Plaintiff as provided in Paragraph 2, above, and the Defendants herein shall take such other action as may be reasonably necessary to assist the Plaintiff herein in the enforcement of this Agreed Settlement and Judgment Order by execution, suggestion, garnishment or otherwise, as may be allowed by applicable law to perfect the assignment and to insure that the assignment payment is made

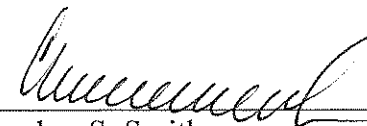
directly to the Plaintiff herein by the Defendants in the aforesaid Case No. CI07-73, and in the event that the sum of (i) the amounts recovered and paid to the Plaintiff herein upon the Defendants' Counterclaim in Case No. CI07-73 and (ii) the amounts paid to the Plaintiff herein, in installments as provided above, is less than \$200,000.00, then the Defendants shall continue to make the installment payments as provided above until the Plaintiff is paid \$200,000.00, and it is further

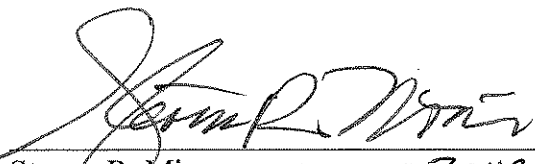
**ORDERED** that the Plaintiff may take any such action as allowed by applicable state or federal law to enforce the full amount of the \$300,000.00 Judgment, plus statutory interest and statutory costs, in the Plaintiff's favor as ordered above in the event the Plaintiff does not receive a timely installment payment as provided above or the Defendants do not give written notice of the assignment of the Defendants' Counterclaim in Case No. CI07-73 as provided herein, or the payment to the Plaintiff upon any recovery in said case is not made as provided herein.

Entered: April 1, 2009

  
THOMAS E. JOHNSTON  
UNITED STATES DISTRICT JUDGE

Agreed to by:

  
Christopher S. Smith - WV State Bar #3457  
Hoyer, Hoyer & Smith, PLLC  
22 Capitol Street  
Charleston, West Virginia 25301  
(304) 344-9821; (304) 344-9519 Fax  
[Chris@HHSMLaw.com](mailto:Chris@HHSMLaw.com)  
*Counsel for the Plaintiff, Hanson and Morgan Livestock, Inc., d/b/a Greenbrier Valley Livestock Market*

  
Steven R. Minor - Va. State Bar # 30496  
Elliott Lawson & Minor  
110 Piedmont Avenue  
Post Office Box 8400  
Bristol, VA 24203  
(276) 466-8400  
[sminor@elliottlawson.com](mailto:sminor@elliottlawson.com)  
*Counsel for the Defendants, B4 Cattle Company, Inc. and Bert Smith, IV*